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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,716	08/29/2001	Isao Muraguchi	N36-136495 M/TH	5755
7590	12/17/2003		EXAMINER	
McGuire Wood 1750 Tyson Boulevard, Suite 1800 Tyson Corner McLean, VA 22102-3915			SHAFFER, RICKY D	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/940,716	MURAGUCHI ET AL.	
	Examiner Ricky D. Shafer	Art Unit 2872	<i>MW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(d).

Status

1) Responsive to communication(s) filed on 19 June 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-22 is/are pending in the application.
4a) Of the above claim(s) 8 and 15-22 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1,3-7 and 9-14 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .

4) Interview Summary (PTO-413) Paper No(s). ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

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1. Applicant's election with traverse of species "A" (the refractive index of an odd number layer being higher than the refractive index of an outermost layer) in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the species are sufficiently related and that would be no undue burden to examined the nonelected species along with the elected species. This is not found persuasive because the restriction requirement set forth in Paper No. 9 is based on the claimed structural differences between the various species and not on their similarities. Continued search and examination of claim(s) to a non-elected species having substantially different structural limitations is a *prima facie* showing of burden. Applicant may overcome the requirement for restriction by presenting an allowable linking claim or by providing a clear admission on the record that the claim(s) drawn to a given non-elected species is not patentably distinct from the elected species.

Applicant asserts that claims 1 and 3-16 read on elected species "A". The examiner agrees that claims 1, 3-7 and 9-14 read on the elected species. However, the examiner disagrees that claims 8, 15 and 16 read on the elected species for the reasons stated below.

The examiner states that claims 8, 15 and 16 are drawn to species "B" due to the fact that the refractive index of the odd number layer is lower than the refractive index of the outermost layer which is not the case with elected species "A", which clearly defines that the refractive index of the odd number layer is higher than the refractive index of the outermost layer.

The requirement is still deemed proper and is therefore made FINAL.

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2. Claims 8 and 15-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected species, the requirement having been traversed in Paper No. 4.

3. Claims 7 and 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 is vague, indefinite and lacks proper nexus with respect to the element(s) or feature(s) recited in claim 1. For example, in claim 7, line 2, the use of the language "a transparent substrate" is vague, indefinite and/or confusing. It is unclear to the examiner whether the above mentioned language is referring to the transparent flat substrate of claim 1, line 13 or to an additional transparent substrate.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito ('179).

Ito discloses a polarizing filter comprising a plurality of dielectric materials alternatively arranged on a transparent substrate to form a laminate, wherein said filter includes a first group (SiO₂, MgF₂) of low index of refraction materials, a second group (TiO₂, ZrO₂) of high index of

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refraction materials and an intermediate layer of (Al₂O₃) serving as the outermost surface of the layers. Note, by example only, Table 20.

6. Any inquiry concerning this communication should be directed to R.D. Shafer at telephone number (703) 308-4813

RDS

December 15, 2003

R.D. Shafer
R.D. SHAFER
FAX UNIT 2872